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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

FREDERIT DIAZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

LUZAZUL INC., dba TIO LEO'S MEXICAN
RESTAURANT, a California corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2024-00006403-CU-OE-CTL

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT**

1. Meal Period Violations
2. Rest Period Violations
3. Untimely Payment of Wages During Employment
4. Wage Statement Violations
5. Waiting Time Penalties
6. Unfair Competition
7. Civil Penalties under the PAGA

1 Plaintiff FREDERIT DIAZ (“Plaintiff”) brings this class and representative action as an
2 individual and on behalf of all other similarly situated current and former California employees against
3 Defendants LUZAZUL INC., dba TIO LEO’S MEXICAN RESTAURANT; and DOES 1 through 50
4 (collectively, “Defendants”), and on information and belief alleges as follows:

5 **INTRODUCTION**

6 1. This is a class and representative action brought under California Code of Civil
7 Procedure § 382 for Defendants’ wage and hour violations of the California Labor Code and Business
8 and Professions Code.

9 2. Plaintiff worked as an hourly, non-exempt employee as a cook for Defendants’
10 restaurant through July 25, 2023. Defendants failed to provide Plaintiff, aggrieved employees, and
11 the Class Members with the opportunity to take meal and rest breaks during the Class Period.
12 Defendants also failed to pay meal or rest period premiums at the regular rate of compensation to
13 Plaintiff and other employees for such “on duty” breaks, as required by Labor Code § 226.7.
14 Defendants thus failed to provide compliant meal and rest periods (or premiums in lieu thereof). As
15 a result of these violations, Defendants failed to timely pay Plaintiff and other employees each pay
16 period on paydays and upon separation of employment, and thus are liable for waiting time and other
17 statutory penalties.

18 3. Plaintiff was retaliated against and wrongfully terminated when he attempted to take a
19 brief rest break in compliance with California law.

20 4. Defendants’ employment policies and practices and payroll administration systems
21 enabled and facilitated these violations on a company-wide basis with respect to the aggrieved
22 employees and Class Members.

23 **JURISDICTION & VENUE**

24 5. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
25 California Constitution.

26 6. Venue as to each defendant is proper in this judicial district under Code of Civil
27 Procedure §§ 395(a) and 395.5 because Defendants conduct business in this county and committed
28 some of the alleged violations in this county.

1 **PARTIES**

2 **Plaintiff Frederit Diaz**

3 7. Plaintiff Frederit Diaz is an individual over 18 years of age who worked for Defendants
4 in California as an hourly, non-exempt employee from January 1993 through July 25, 2023.

5 8. The State of California, via the Labor and Workforce Development Agency
6 (“LWDA”), is the real party in interest in this action with respect to the PAGA claims. (*Kim v. Reins*
7 *Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
8 files suit is always the real party in interest.”])

9 **Defendants**

10 9. Defendant Luzazul Inc., dba Tio Leo’s Mexican Restaurant, is corporation registered
11 to do business in the State of California, doing business and employing labor throughout California,
12 and in San Diego County.

13 10. The true names and capacities, whether individual, corporate, or otherwise, of the
14 parties sued as DOES 1 through 50, are presently unknown to Plaintiff, who sues them by such
15 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes and alleges
16 that each of the fictious defendants is responsible in some manner for the acts and omissions alleged
17 herein. Plaintiff will seek leave to amend this Complaint to reflect their true names and capacities
18 when they become known.

19 11. Plaintiff is informed, believes, and alleges that all defendants in this action are
20 employers and/or joint employers and part of an integrated employer enterprise, as each defendant
21 exercises control over the wages, hours, and working conditions of Plaintiff and other employees,
22 suffers and permits them to work, and engages the workforce creating a common law employment
23 relationship. Additionally, all Defendants have common ownership, common management,
24 interrelationship of operations, and centralized control over labor relations and are therefore part of an
25 integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged
26 herein.

27 12. Plaintiff is informed, believes, and alleges that each defendant acted in all respects
28 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,

partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant are legally attributable to all others.

13. Plaintiff is informed, believes and alleges that the above-mentioned Defendants violated and/or caused to be violated Labor Code and Industrial Welfare Commission (“IWC”) Wage Order provisions and/or regulating minimum wages and days of work and other provisions of the Labor Code with respect to the Class of aggrieved employees. As a result, they may be held personally liable under Labor Code sections 558, 558.1, and 1197.1. (*See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.)

CLASS ALLEGATIONS

Class Members

14. Plaintiff brings this action as an individual and on behalf of the following class under Code of Civil Procedure § 382: All individuals currently or formerly employed by Defendants in the State of California as hourly non-exempt employees at any time from four years preceding the filing of this action through the time of trial (the “Class” or “Class Members” and the “Class Period”).

15. Further, Plaintiff proposes the following subclasses:

- a. Meal Period Subclass: All Class Members who [1] worked shifts of five hours or more without a duty-free meal period of at least 30 minutes, or worked shifts of 10 hours or more without a second duty-free meal period of at least 30 minutes, and [2] who were not paid one hour of pay at the regular rate of compensation for each of those days.
- b. Rest Period Subclass: All Class Members who [1] were not authorized and permitted to take a 10-minute rest period for every four hours or major fraction thereof and [2] who were not paid one hour at the regular rate of compensation for each of those days.
- c. Untimely Payment of Wages Subclass: All individuals who are members of the following classes: (i) Meal Period Subclass; and (ii) Rest Period Subclass.
- d. Wage Statement Subclass: All individuals who are members of the following classes who received a wage statement from Defendants at any time during the

one-year period preceding the filing of this action through the present: (i) Meal Period Subclass; and (ii) Rest Period Subclass.

e. Waiting Time Penalty Subclass: All individuals who are members of the following classes at any time during the three-year period preceding the filing of this action through the present, excluding current employees who have never previously separated from employment with Defendants: (i) Meal Period Subclass; and (ii) Rest Period Subclass.

16. **Numerosity.** The members of the Class are so numerous that joinder of all individuals would be impracticable. The identity of the Class Members is readily ascertainable by inspection of employment and payroll records Defendants maintain and are required to maintain by under the California Labor Code, IWC Wage Orders, and federal law. Plaintiff is informed, believes, and alleges there are more than 50 Class Members.

17. **Adequacy of Representation.** Plaintiff is an adequate class representative. Plaintiff will take all necessary steps to adequately and fairly represent and protect the interest of the Class. Plaintiff is represented by attorneys who have substantial experience prosecuting, defending, resolving and litigating wage and hour class actions in California state and federal courts.

18. **Superiority.** A class action is superior to other means for adjudication of the claims of the Class and is beneficial and efficient for the parties and the Court. Class treatment will allow for the common issues to be resolved in a single forum, simultaneously and without duplication of effort and expense.

19. **Commonality.** Common questions of law and fact and a community of interest exist amongst Plaintiff and the Class. These common issues arise from the employment relationship with Defendants and predominate over any individual issues.

20. **Typicality.** Plaintiff's claims are typical of the claims of the other Class Members. Plaintiff and Class Members were subject to the same policies and practices of Defendants, which resulted in losses to Plaintiff and Class Members. Proof of common unlawful business practices, which Plaintiff experienced and is representative of, will establish the right of the Class to recover on the causes of action alleged herein.

PAGA ALLEGATIONS

21. Plaintiff seeks to recover civil penalties as an individual aggrieved employee and on behalf of the State of California and all current and former non-exempt hourly employees who worked for Defendants in the State of California during one-year period preceding the date of the PAGA Notice through the current date and the date of final judgment in any pending action (the “aggrieved employees” and the “PAGA Period”).

22. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action with respect to the PAGA claims. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”])

23. Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants and personally experienced one or more of the alleged violations. Therefore, Plaintiff is properly suited to act on behalf of the State of California and collect civil penalties for all violations committed against all other current and former aggrieved employees of Defendants. (*See, e.g., Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.”])

24. “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” (Labor Code § 2699(a)).

25. Now that at least 65 days have passed from Plaintiff first notifying Defendants and the LWDA on **November 15, 2023** of the specific provisions of the Labor Code alleged to have been violated (including the supporting facts and theories) without LWDA intervention—and without Defendants giving written notice by certified mail to Plaintiff providing a description of any actions taken to cure the alleged violations within 33 days—Plaintiff exhausted all prerequisites and

commences this civil action under Labor Code § 2699 with respect to the PAGA notice and any amendments or supplements thereto. A true and correct copy of the PAGA Notice, incorporated by reference as though fully set forth herein, is attached hereto as **Exhibit A**.

26. All allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”)

GENERAL ALLEGATIONS

27. Plaintiff and other aggrieved employees and Class Members were compensated on an hourly basis. Due to the high volume of tasks and constant pressure during each workday, Plaintiff and other aggrieved employees and Class Members were often unable to take meal and rest periods in compliance with California law, in violation of Labor Code sections 226.7, 512 and section 11 of the applicable IWC Wage Orders.

28. When Defendants did not provide fully compliant meal periods, Defendants failed to pay Plaintiff and other aggrieved employees and Class Members a meal period premium at the regular rate of compensation in violation of Labor Code section 226.7. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”).

29. Furthermore, due to the heavy workload and pressures from Defendants, Defendants failed to authorize or permit ten-minute rest periods for every four hours of work or major fraction thereof as required by Labor Code section 226.7 and 516 and section 12 of the applicable IWC Wage Order. Defendants also had a policy and practice of not paying rest period premiums to Plaintiff and other aggrieved employees and Class Members who were unable to take rest periods.

30. Defendants forced Plaintiff and other employees to click a confirmation that employees “waived” their meal breaks in order to clock out and be paid for the day. Employees could not clock out and be paid without clicking the confirmation, and were effectively forced to do so. Plaintiff and Class Members did not voluntarily waive their meal breaks. Similarly, Defendants forced Plaintiff and other employees to click a confirmation that employees received their rest breaks in order to clock out

1 and be paid for the day. Employees could not clock out and be paid without clicking the confirmation
2 regardless of whether they had actually taken their breaks.

3 31. Defendants were aware that Plaintiff and other aggrieved employees and Class
4 Members worked through meal and rest periods because Defendants set the policies and schedules
5 that prevented employees from taking lawful breaks. Defendants encouraged Plaintiff and other
6 aggrieved employees and Class Members to work through meal periods and rest periods and assigned
7 them tasks that prevented them from taking any meal or rest breaks.

8 32. On or around July 25, 2023, Plaintiff took a less-than 10-minute rest break because he
9 had to speak with his sick daughter. This was one of the few rest breaks that Plaintiff took during his
10 entire employment due to the pressures and tasks assigned to him that made taking such breaks
11 impossible. Plaintiff was fired that same day in retaliation for exercising his right to take a rest break.

12 33. Plaintiff believes, and thereon alleges, that Defendants utilize the timekeeping system
13 to cover up the fact that their operations almost always preclude employees from receiving the meal
14 and rest breaks to which they are legally entitled. Plaintiff and others have complained about their
15 inability to take breaks to no avail.

16 34. With respect to the unpaid regular wages, overtime wages, and meal and rest period
17 premiums owed to Plaintiff and other employees, Defendants failed to pay those wages on time each
18 pay period or upon separation of employment. (*See Naranjo v. Spectrum Security Services, Inc.* (2022)
19 13 Cal. 5th 93.)

20 35. Because Defendants did not pay Plaintiff and other employees for all wages/premiums
21 owed each pay period of their employment, Defendants failed to timely pay all wages owed each pay
22 day or upon separation of employment (or within 72 hours thereof), in violation of Labor Code
23 sections 201 through 203 (waiting time) and 204 and 204b (paydays).

24 36. Defendants further failed in their affirmative obligation to provide accurate itemized
25 wage statements each pay period to Plaintiff and other employees. Defendants issued wage statements
26 to Plaintiff and, on information and belief, other employees, which contain multiple violations. First,
27 on each wage statement furnished, Defendants failed to accurately state the “gross wages earned” and
28 “net wages earned” in violation of Labor Code § 226(a)(1) and (5). Plaintiff and other employees

1 were not paid for o meal period premiums or rest period premiums earned at the lawful rate, resulting
2 in an inaccurate itemization of gross and net wages earned on those wage statements.

3 37. These issues described rendered the wage statements inaccurate and confusing to
4 Plaintiff and other employees, concealing the underpayments and presenting a false portrayal of
5 accuracy on the wage statements relied upon by Plaintiff and other employees as the sole documentary
6 evidence of their respective earnings.

7 38. Plaintiff and other employees suffered injury in the form of confusion regarding
8 amounts paid for hours worked, and in the form of concealment of the common payroll practices
9 causing the violations and underpayment of wages and wage statement deficiencies as addressed in
10 this Complaint.

11 39. Indeed, Plaintiff and, on information and belief, other employees were misinformed
12 and misled by the wage statements wages, hours, rates, and earnings. As a result of the inaccuracies
13 on the wage statements, Plaintiff and, on information and belief, other employees were led to believe
14 that the net and gross wages reflected were a complete and accurate reflection of the wages actually
15 earned under California law.

16 40. Defendants' wage statement violations were knowing and intentional as a matter of law
17 with respect to Plaintiff and California employees given that the legal obligation was not disputed, the
18 wage statement and wage laws are clear and unambiguous as written, and because Defendants
19 nevertheless failed to comply despite the means and ability to do so.

20 41. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
21 knowingly and intentionally caused harm to Plaintiff and other employees. Plaintiff is informed,
22 believes, and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC
23 Wage Orders by maintaining practices, policies, and customs that are inconsistent with their
24 obligations under California law.

25 **FIRST CAUSE OF ACTION**

26 **MEAL PERIOD VIOLATIONS**

27 55. Plaintiff and the Class incorporate all outside paragraphs of this Complaint as if set
28 forth herein.

1 56. This cause of action is brought by the Meal Period Subclass pursuant to the IWC Wage
2 Orders and Labor Code §§ 226.7, 558 and 512, which require non-exempt employees be provided
3 complaint meal periods (or meal period premiums in lieu thereof), and which further provide a private
4 right of action for an employer's failure to lawfully provide all meal periods and/or pay meal period
5 premiums at the lawful regular rate of compensation.

6 57. Plaintiff and Meal Period Subclass Members often could not take timely uninterrupted
7 meal periods within the first five hours of work, if at all. Defendants apply the same pressure to other
8 employees and similarly fail to provide other aggrieved employees with compliant meal periods.

9 58. Defendants willfully failed in their affirmative obligation to consistently provide
10 Plaintiff and the Meal Period Subclass Members compliant, duty-free meal periods of not less than
11 30 minutes beginning before the fifth hour of hour for each work period of more than five hours per
12 day and a second duty-free meal period of not less than 30 minutes beginning before the tenth hour of
13 hour of work in violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders
14 (the "Meal Periods" sections of the applicable orders).

15 59. Further, Defendants willfully failed in their affirmative obligation to consistently pay
16 Plaintiff and the Meal Period Subclass Members one additional hour of pay at the respective regular
17 rate of compensation for each workday that a fully compliant meal period was not provided, in
18 violation of Labor Code sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the "Meal
19 Periods" sections of the applicable orders).

20 60. Plaintiff and the Meal Period Subclass Members are entitled to recover to the full
21 amount of the meal period premiums owed, in addition to interest, statutory and civil penalties, and
22 attorneys' fees, and costs to the extent permitted by law.

23 **SECOND CAUSE OF ACTION**

24 **REST PERIOD VIOLATIONS**

25 61. Plaintiff and the Class incorporate all outside paragraphs of this Complaint as if set
26 forth herein.

27 62. This cause of action is brought by the Rest Period Subclass pursuant to the IWC Wage
28 Orders and Labor Code §§ 226.7 and 516, which require non-exempt employees be authorized to take

1 complaint rest periods (or rest period premiums in lieu thereof), and which further provide a private
2 right of action for an employer's failure to lawfully provide all rest periods and/or pay rest period
3 premiums at the lawful regular rate of compensation.

4 63. Due to Plaintiff's and Rest Period Subclass Members' job responsibilities and pressures
5 from Defendants, Plaintiff and the Rest Period Subclass often were not authorized or permitted to take
6 rest periods. Plaintiff and the Rest Period Subclass rarely took rest breaks due to the non-stop demands
7 of Defendants' operations and the understaffing. Defendants had a policy and practice of not paying
8 rest period premiums to aggrieved employees who were unable to take rest periods.

9 64. Defendants willfully failed in their affirmative obligation to consistently authorize and
10 permit Plaintiff and the Rest Period Subclass Members to receive compliant, duty-free rest periods of
11 not less than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of
12 Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the "Rest Periods" sections
13 of the applicable orders).

14 65. Further, Defendants willfully failed in their affirmative obligation to consistently pay
15 Plaintiff and the Rest Period Subclass one additional hour of pay at the respective regular rate of
16 compensation for each workday that a fully compliant rest period was not provided, in violation of
17 Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

18 66. Plaintiff and the Rest Period Subclass are entitled to recover to the full amount of the
19 rest period premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees,
20 and costs to the extent permitted by law.

21 **THIRD CAUSE OF ACTION**

22 **UNTIMELY PAYMENT OF WAGES DURING EMPLOYMENT**

23 67. Plaintiff and the Class incorporate all outside paragraphs of this Complaint as if set
24 forth herein.

25 68. This cause of action is brought by the Untimely Payment of Wages Subclass pursuant
26 to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt employees
27 be timely paid all wages owed each pay period, and which further provide a private right of action for
28 an employer's failure to comply with this obligation.

69. Defendants willfully failed in their affirmative obligation to timely pay all wages, including meal and rest premiums, earned by Plaintiff and the Untimely Payment of Wages Subclass Members twice during each calendar month on days designated in advance by the employer as regular paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of the applicable orders).

70. Plaintiff and the Untimely Payment of Wages Subclass are entitled to recover the full amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay each employee and \$200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys’ fees, and costs to the extent permitted by law.

FOURTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

55. Plaintiff and the Class incorporate all outside paragraphs of this Complaint as if set forth herein.

56. This cause of action is brought by the Wage Statement Subclass pursuant to Labor Code § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each pay period, and which further provide a private right of action for an employer’s failure to comply with this obligation.

57. Defendants knowingly and intentionally failed in their affirmative obligation provide accurate itemized wage statements to Plaintiff and the Wage Statement Subclass Members resulting in injury to Plaintiff and Wage Statement Subclass Members. Specifically, the wage statements issued to Plaintiff and Wage Statement Subclass Members did not accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

58. Defendants’ unlawful acts and omissions deprived Plaintiff and the Wage Statement Subclass of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

1 59. As a result, Plaintiff and the Wage Statement Subclass are entitled to recover the
2 statutory penalty of \$50 per employee for the initial pay period in which a violation occurred and \$100
3 per employee for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per
4 employee, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

5 **FIFTH CAUSE OF ACTION**

6 **WAITING TIME PENALTIES**

7 60. Plaintiff and the Class incorporate all outside paragraphs of this Complaint as if set
8 forth herein.

9 61. This cause of action is brought by the Waiting Time Penalty Subclass pursuant to Labor
10 Code §§ 201 through 203, which require an employer to timely pay all wages earned upon termination
11 of employment, and which further provide a private right of action to recover statutory waiting time
12 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
13 wages.

14 62. Defendants willfully failed and continue to fail in their affirmative obligation to pay all
15 wages, including meal and rest premiums, earned and unpaid to Plaintiff and members of the Waiting
16 Time Penalty Subclass immediately upon termination of employment or within 72 hours thereafter for
17 employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further
18 failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203
19 and the IWC Wage Orders.

20 63. Plaintiff and the Waiting Time Penalty Subclass are entitled to recover to a waiting
21 time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent
22 permitted by law.

23 **SIXTH CAUSE OF ACTION**

24 **UNFAIR COMPETITION**

25 64. Plaintiff and the Class incorporate all outside paragraphs of this Complaint as if set
26 forth herein.

27 65. Plaintiff brings this cause of action on behalf of all Classes.
28

1 66. Defendants have engaged and continue to engage in unfair and/or unlawful business
2 practices in the State of California in violation of California Business and Professions Code § 17200
3 by failing committing the foregoing wage and hour violations alleged throughout this Complaint.

4 67. Defendants' dependance on these unfair and/or unlawful business practices deprived
5 Plaintiff and continue to deprive other Class Members of compensation to which they are legally
6 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
7 Defendants over competitors who have been and/or are currently employing workers in compliance
8 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
9 business acts and practices in violation of Business and Professions Code section 17200, et seq.

10 68. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
11 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
12 restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired,
13 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.
14 Plaintiff and the Class are entitled to injunctive relief against Defendants, restitution, and other
15 equitable relief to return all funds over which Plaintiff and the Class have an ownership interest and
16 to prevent future damage and the public interest under Business and Professions Code § 17200, et seq.
17 Plaintiff and the Class are further entitled to recover interest, attorneys' fees, and costs to the extent
18 permitted by law, including under Code of Civil Procedure § 1021.5.

19 **SEVENTH CAUSE OF ACTION**

20 **CIVIL PENALTIES FOR FAILURE TO PAY**

21 **ALL REGULAR AND MINIMUM WAGES**

22 **LABOR CODE §§ 1182.12, 1194, 1197**

23 a. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

24 b. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
25 the following "aggrieved employees" pursuant to the PAGA, codified as Labor Code section 2698 et
26 seq.: All current and former non-exempt employees who worked for Defendants in California at any
27 time from one year prior to the postmark date of the initial PAGA notice through date of trial.

1 c. Plaintiff reserves the right to amend, supplement, or add to this description of the
2 aggrieved employees according to proof.

3 d. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,
4 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
5 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
6 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
7 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
8 former employees pursuant to the procedures specified in Section 2699.3.”

9 e. Labor Code section 2699(f) provides: “For all provisions of this code except those for
10 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
11 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
12 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
13 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
14 for each subsequent violation.”

15 f. Labor Code section 558(a) provides: “Any employer or other person acting on behalf
16 of an employer who violates, or causes to be violated, a section of this chapter or any provision
17 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject
18 to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid
19 employee for each pay period for which the employee was underpaid in addition to an amount
20 sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100)
21 for each underpaid employee for each pay period for which the employee was underpaid in addition
22 to an amount sufficient to recover underpaid wages.”

23 g. Labor Code section 1197.1(a) provides: “Any employer or other person acting either
24 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
25 any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
26 of the commission, shall be subject to a civil penalty ... and any applicable penalties imposed pursuant
27 to Section 203 as follows: (1) For any initial violation that is intentionally committed, one hundred
28 dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid

1 ... and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation
2 for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
3 pay period for which the employee is underpaid regardless of whether the initial violation is
4 intentionally committed.”

5 h. Defendants have committed violations of the California Labor Code against Plaintiff
6 and other aggrieved employees as discussed herein. Plaintiff is an “aggrieved employee” within the
7 meaning of Labor Code section 2689 et seq. (*See Huff v. Securitas Security Services USA* (2018) 23
8 Cal. App. 5th 745.) Acting on behalf of other aggrieved employees, Plaintiff brings this representative
9 action against Defendants to recover the civil penalties due to Plaintiff individually and other
10 aggrieved employees and the State of California, according to proof, pursuant to Labor Code Sections
11 558 and 2699 (a) and (f), including but not limited to: (1) \$100 for each initial violation for each failure
12 to pay each employee and \$200 for each subsequent violation or willful or intentional violation
13 pursuant to Labor Code section 210 for each failure to pay each employee, plus 25 percent of the
14 amount unlawfully withheld; (2) \$50 for each initial violation and \$100 for each subsequent violation
15 pursuant to Labor Code section 558 per employee per pay period, plus an amount sufficient to recover
16 the unpaid wages owed to each aggrieved employee; (3) \$100 for each initial violation and \$250 for
17 each subsequent violation pursuant to Labor Code section 1197.1 per employee per pay period; (4)
18 \$250 for each initial violation and \$1,000 for each subsequent violation pursuant to Labor Code section
19 226.3 per employee per pay period; and/or (5) \$100 for each initial violation and \$200 for each
20 subsequent violation per employee per pay period for those violations of the Labor Code for which no
21 specific penalty is provided, based on the following Labor Code violations:

22 i.

23 a. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 204, 210,
24 226.7, 512, 1198; IWC Wage Orders.

25 b. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
26 1198; IWC Wage Orders.

27 c. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§
28 204, 204b, 210.

1 d. **Untimely Payment of Wages Upon Separation of Employment.** Violation of
2 Labor Code §§ 201, 202, 203, 256.

3 e. **Non-Compliant Wage Statements.** Violation of Labor Code §§ 226, 226.3.

4 f. **Failure to Maintain Accurate Records.** Violation of Labor Code §§ 558 and 1174;
5 IWC Wage Orders.

6 g. **Retaliation** in Violation of Labor Code Section 1102.5.

7 j. Plaintiff and other aggrieved employees were subjected to all of the above violations,
8 and they allege that Defendants maintain a policy and practice of similarly depriving other aggrieved
9 employees of their rights.

10 k. Defendants committed the above violations as a result of their intentional policies, and
11 therefore willfully failed in their affirmative obligation to pay Plaintiff and aggrieved employees their
12 lawful wages in violation of Labor Code sections 1182.12, 1194, 1197 and 1198 and the IWC Wage
13 Orders (the “Hours and Days of Work” and “Minimum Wages” sections of the applicable orders), to
14 provide meal and rest periods, to timely pay each employee their wages each pay period, to maintain
15 and provide accurate payroll records, and to timely pay each employee all wages owed upon their
16 termination or end of employment.

17 l. Plaintiff was compelled to retain counsel to file this court action to protect the interests
18 of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants to such
19 aggrieved employees and the State of California. Plaintiff has thereby incurred attorney’s fees and
20 costs, which Plaintiff is entitled to recover under California Labor Code Section 2699(g).

21 **PRAYER**

22 Plaintiff prays for judgment as follows:

- 23 a. For certification of this action as a class action;
24 b. For appointment of Plaintiff as the representative of the Class;
25 c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
26 d. For recovery of damages in amount according to proof;
27 e. For all recoverable pre- and post-judgment interest;
28 f. For recovery of all civil and statutory penalties and liquidated damages;

- 1 g. For disgorgement of all amounts wrongfully obtained;
- 2 h. For this action to be maintained as a representative action under the PAGA;
- 3 i. For Plaintiff and Plaintiff's counsel to be provided with all enforcement capability as
- 4 if the action were brought by the State of California or the California Division of Labor
- 5 Enforcement;
- 6 j. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 7 k. For restitution and injunctive relief;
- 8 l. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
- 9 permitted by law, including under California Labor Code sections 218.5, 226, 1194,
- 10 2802, 2699(g) and Code of Civil Procedure section 1021.5; and
- 11 m. For such other relief the Court deems just and proper.

12 Dated: February 7, 2024

WALTMAN EMPLOYMENT LAW

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14 _____
Rick A. Waltman
15 Matthew B. Shields

16 *Attorneys for Plaintiff*

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EXHIBIT A

LWDA Notice

WALTMAN EMPLOYMENT LAW

501 W. Broadway, Ste. 800
San Diego, CA 92101

(619) 320-5666
rick@rickwaltmanlaw.com

November 15, 2023

NOTICE OF LABOR CODE VIOLATIONS CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

PAGA CLAIM NOTICE AND FILING FEE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

VIA CERTIFIED U.S. MAIL

Frank Sciuto
Luzazul Inc.
5302 Napa St.
San Diego, CA 92110

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of Claimant Frederit Diaz (“Claimant”) and other aggrieved employees under California Labor Code section 2699.3 against Luzazul Inc., doing business as Tio Leo’s Mexican Restaurant, along with the company’s owner(s) (including), and any other related individuals or employer entities who may be later added (“Defendants”).

If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed period under Labor Code section 2699.3, Claimant shall seek and recover civil penalties as a proxy and agent of the State of California on behalf of other aggrieved employees under the California Private Attorneys General Act (“PAGA”).

“PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *see also Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

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Luzazul, Inc.
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FACTUAL STATEMENT

Defendants operate a restaurant company in San Diego. Defendants employ hourly, non-exempt employees throughout the state of California, including in San Diego, who are entitled to wage and hour protections under the California Labor Code and IWC Wage Orders.

Defendants engaged, suffered and permitted Claimant and the other “aggrieved employees,” as defined below, to work, exercised control over their respective wages, hours, and working conditions, and at all times was an agent and/or ostensible agent of any other employers, and the joint employer of Claimant and other aggrieved employees. Defendants legally employed Claimant and the other aggrieved employees under California law. Additionally, Defendants and their agents are liable under Labor Code sections 558, 558.1, 1197.1 and 2699 *et seq.* based on the acts and omissions set forth herein.

Claimant worked as a cook for Defendants from January 1993 to July 25, 2023. Claimant was an hourly, non-exempt employee during his entire employment with Defendants.

Claimant and other aggrieved employees were often unable to take meal and rest periods in compliance with California law, as is discussed further below. When Claimant and other employees were unable to take a compliant meal and/or rest break, Defendants failed to pay one hour of premium pay at the employees’ regular rate of pay as required by California law. Defendants were aware that Claimant and other aggrieved worked through meal and rest periods because Defendants set the policies and schedules that prevented employees from taking lawful breaks. Defendants encouraged Claimant and other employees to work through meal periods and rest periods, and assigned them tasks that prevented them from taking any meal or rest breaks. Defendants forced Claimant and other employees to click a confirmation that employees received their breaks in order to clock out and be paid for the day. Employees could not clock out and be paid without clicking the confirmation regardless of whether they had actually taken their breaks. Claimant believes, and thereon alleges, that Defendants utilize the timekeeping system to cover up the fact that their operations almost always preclude employees from receiving the meal and rest breaks to which they are legally entitled. Claimant and others have complained about their inability to take breaks to no avail.

On or around July 25, 2023, Claimant took a less-than 10-minute rest break because he had to speak with his sick daughter. This was one of the few rest breaks that Claimant took during his entire employment due to the pressures and tasks assigned to him that made taking such breaks impossible. Claimant was fired that same day in retaliation for exercising his right to take a rest break.

Through this notice, Claimant informs the LWDA of the Labor Code violations set forth herein. The aggrieved employees who Claimant seeks to represent include the following individuals:

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Luzazul, Inc.
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All current and former non-exempt hourly employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of final judgment in any pending action (the “aggrieved employees” and the “PAGA Period”).

Claimant seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered. Claimant reserves the right to narrow the definition of the “aggrieved employees” in the forthcoming civil action.

Failure to Provide Meal Periods **Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders**

Defendants failed to provide meal periods, or to pay meal period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 512 and 1198, and the related sections of the IWC Wage Orders, including section 11.

Labor Code section 512 requires that employers provide a 30-minute, uninterrupted meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay for an hour of pay at the employee’s “regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful.

Furthermore, Section 11(A) of the IWC wage orders permit on-duty meal periods under certain limited circumstances. The California Supreme Court has held that the on-duty meal period exception is “exceedingly narrow” and applies only when (1) “the nature of the work prevents the employee from being relieved of all duty” and (2) *both* “the employer and employee have agreed, in writing, to the on-duty meal period.” *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

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Defendants failed to provide compliant and timely meal periods. Defendants required Claimant to work through meal periods and to effectively take meal periods, if any, “on duty.” Claimant and other aggrieved employees often could not take timely uninterrupted meal periods within the first five hours of work, if at all. Defendants apply the same pressure to other employees and similarly fails to provide other aggrieved employees with compliant meal periods. When Defendants did not provide compliant meal periods, and Defendants also failed to pay Claimant and other aggrieved employees a meal period premium in violation of Labor Code section 226.7. As such, Defendants are also liable for meal period premiums for any on-duty meal period taken by an aggrieved employee.

As a result, Claimant may recover civil penalties in an individual capacity, and on behalf of the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Provide Rest Periods **Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders**

Defendants failed provide rest periods, and to pay rest period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 516 and 1198, and the related sections of the IWC Wage Orders, including section 12.

Labor Code sections 226.7 and 516, along with the IWC Wage Orders, require that employers authorize and permit a 10-minute, uninterrupted rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a meal period is non-compliant, the employer must pay for an hour of pay at the employee’s “regular rate” of compensation. *See Ferra v. Loews Hollywood Hotel*, 11 Cal. 5th at 862. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. Defendants required Claimant and other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law.

Due to Claimant’ and other employees’ job responsibilities and pressures from Defendants, Claimant and the aggrieved employees often were not authorized or permitted to take rest periods. Claimant rarely took rest breaks due to the non-stop demands of Defendants’ operations and the understaffing. Defendants had a policy and practice of not paying rest period premiums to aggrieved employees who were unable to take rest periods.

As a result, Claimant may recover civil penalties in an individual capacity, and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699

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(\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment **Violation of Labor Code §§ 204, 204b, 210**

Defendants violated Labor Code sections 204 and 204b requiring payment of all wages on regularly scheduled paydays with respect to Claimant and other aggrieved employees by failing to pay all wages owed on the regular pay days scheduled each pay period. To the extent that Defendants made or make any retroactive payments to Claimant or other aggrieved employees, such amounts are untimely in violation of these payday statutes.

Because Defendants failed to pay all wages in each pay period in which such wages were earned at the lawful rate for overtime, meal/rest premiums and other forms of remuneration, Defendants violated Labor Code section 204 and/or 204b (for weekly employees), which requires timely payment of wages of wages each regular scheduled pay period. Labor Code section 204 requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As explained above, Defendants failed to pay Claimant and other aggrieved employees meal and rest period premiums. Defendants are separately liable for not paying the full amount owed to Claimant and other aggrieved employees each payday in violation of Labor Code sections 204 and/or 204b.

As a result, Claimant may recover civil penalties in an individual capacity, and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment **Violation of Labor Code §§ 201, 202, 203**

Defendants violated Labor Code sections 201, 202 and 203 requiring timely payment of all wages upon separation and waiting time penalties in lieu thereof with respect to aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72

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hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days.

Because Defendants failed to pay all wages owed to the aggrieved employees during their employment and failed to properly pay regular and overtime wages at the lawful respective rates, Defendants failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203.

As a result, Claimant may recover civil penalties in an individual capacity, and on behalf of the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements **Violation of Labor Code §§ 226, 226.3**

Defendants violated Labor Code section 226 with respect to Claimant and other aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.¹ An employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of \$250 per employee per violation for the initial citation and \$1,000 per employee for each violation in a subsequent citation, in addition to other penalties allowed by law.

¹ See generally *Lopez v. Friant & Associates, LLC* (2017) 15 Cal. App. 5th 773, 787-88 ("Consistent with the PAGA statutory framework and the plain language of section 226(e), we hold a Claimant seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the "injury" and "knowing and intentional" requirements of section 226(e)(1)"); see also *See Kastler v. Oh My Green, Inc.* (N.D. Cal., Oct. 25, 2019) Case No. 19-CV-02411-HSG ("Injuries from a failure to provide an accurate pay statement include 'possibility of not being paid overtime, employee confusion over whether they received all wages owed them, difficulty and expense involved in reconstructing pay records, and forcing employees to make mathematical computations to analyze whether the wages paid in fact compensated them for all hours worked'" (rejecting *Maldonado* defense for class claims)).

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Throughout the relevant statutory period, as a result of the foregoing violations identified in this notice—unpaid regular and overtime wages and premiums—Defendants violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees earned regular wages, overtime, and premiums, but were instead underpaid, resulting in an inaccurate reflection and recording of “gross wages earned” on those wage statements. Defendants also violated Labor Code section 226(a)(5) with respect to “net wages earned” for the same reasons, as the “net wages earned” are depreciated and underpaid resulting in an inaccurate reflection on the pay stub.

Claimant and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sowed confusion among Claimant and other aggrieved employees with respect to what amounts were owed and paid, and how those amounts were calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments throughout the relevant period.

As a result, Claimant may recover civil penalties in an individual capacity, and on behalf of the State of California and the aggrieved employees as provided under Labor Code sections 226.3 (\$250/\$1,000) and/or 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records

Violation of Labor Code §§ 1174, 1174.5, 1198; IWC Wage Orders

Because of the violations set forth in this notice, including Defendants’ failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay, Defendants violated Labor Code section 1174 and the IWC Wage Orders by failing to maintain accurate payroll records showing all accurate wages owed to each employee. As a result, Defendants are liable for a civil penalty of \$500 per employee to Claimant and each aggrieved employee pursuant to Labor Code section 1174.5.

Retaliation

Labor Code § 1102.5

Defendants violated Labor Code section 1102.5 by retaliating against Claimant and potentially others due to their protected complaints of Labor Code violations listed above. When Claimant attempted to take his rest break, he was terminated almost immediately. Claimant believes and thereon alleges that he and other employees were forced out of the company for opposing Defendants’ unlawful break practices. Defendants are liable for a \$10,000 penalty with respect to Claimant Davis and for each aggrieved employee who Defendants similarly retaliated against.

Attorneys’ Fees and Costs

WALTMAN EMPLOYMENT LAW

Luzazul, Inc.
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Labor Code § 2699(g)

Claimant were compelled to retain the services of counsel to file this court action to protect Claimant's own interests, the interests of other aggrieved employees, and the State of California. Claimant has thereby incurred and will continue to incur attorneys' fees and costs, which are recoverable on all PAGA causes of action under Labor Code section 2699(g).

Notice of Demand for Defendants to Change Policies and Practices

Claimant intend to pursue legal action against Defendants based on the violations set forth in this notice. Defendants are hereby notified that any attempt to resolve this case must be conducted in coordination with Claimant's counsel to protect the interests of Claimant, the aggrieved employees, and the State of California via the LWDA. Any and all settlements releasing liability require Court approval in connection with Claimant and their counsel to fully release liability and resolve the claims alleged in this notice. Claimant will establish that (1) this lawsuit was a catalyst in motivating Defendants to change their policies and practices and provide the relief sought through this action, (2) that the forthcoming lawsuit has merit and is based on undisputed violations for which Defendants will be liable at trial, and (3) that Claimant has hereby notified Defendants of their violations and considers this notice an attempt to resolve the matter. *See Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608 (citing *Graham v. Daimler-Chrysler Corp.* (2004) 34 Cal. 4th 553) (authorizing an award of catalyst attorneys' fees against the defendants).

CONCLUSION

If the LWDA does not pursue enforcement, Claimant will bring representative claims on behalf of the State of California and the aggrieved employees seeking all recoverable civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Thank you for your attention to this matter.

Sincerely,

WALTMAN EMPLOYMENT LAW



Rick A. Waltman